

SEPTEMBER 23, 2003

REGULAR SESSION

7:00 P.M.

Following a Council Work Session, the Regular Session Meeting was called to order at 7:00 P.M. by Mayor Ferguson with Councilmembers Simillion, Stone, Smits, and Duba present, along with City Attorney Landwehr, City Manager Collins, Deputy City Clerk Meehan, Parks & Recreation Director Ampietro, Community Development Director Hannon, Finance Director Hanson, Police Chief Keehne, Public Works Director Coleman, several interested citizens and the press.

PUBLIC HEARING

Mayor Ferguson opened the Public Hearing at 7:00 P.M. and explained the purpose of the hearing is to receive public input on ZA-03-2, Text Amendment to the Land Development Code Re: Religious Land Uses.

The Mayor asked if there was proof of publication. Deputy City Clerk Meehan replied yes.

The Mayor called for the applicant's testimony. Community Development Director Hannon stated that the City is requesting a text amendment initiated by the City of Gunnison to bring the City's Land Development Code into compliance with new federal legislation, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). RLUIPA specifies equal treatment of religious land uses against other forms of public assembly. It is also meant to safeguard religious land uses from unjust burdens being placed upon them by state and local governments.

The text amendment is a response to RLUIPA to ensure religious land uses are treated fairly in the community of Gunnison. It compares religious land uses to other private clubs. The City's Land Development Code allows private clubs in the Industrial Zone while churches are not. Therefore, the changes required will be to have private clubs and churches treated the same in Industrial Zones. The City can have churches allowed in the Industrial Zone or prohibit private clubs and churches in the Industrial Zone. Because of the possible negative impact an Industrial Zone may have on churches, Staff and the Planning & Zoning Commission has elected to recommend having both private clubs and churches prohibited in the Industrial Zone. Staff's recommendation is to adopt Ordinance No. 12, Series 2003.

The Mayor called for public input. There was none.

Mayor Ferguson closed the public hearing at 7:07 P.M.

PUBLIC HEARING

Mayor Ferguson opened the Public Hearing at 7:07 P.M. and explained the purpose of the hearing is to receive public input on ZA-01-3, Text Amendment to the Land Development Code Re: Siting of Sexually Oriented Businesses.

The Mayor asked if there was proof of publication. Deputy City Clerk Meehan replied yes.

The Mayor called for the applicant's testimony. Community Development Director Hannon stated that the text amendment is sponsored by the City of Gunnison and that she will go over the staff report concerning ZA-01-3.

On May 28, July 9 and August 13, 2003, the Planning Commission held public hearings on the merits of application ZA-01-3, Sexually Oriented Businesses, by the Community Development Department, City of Gunnison, to amend the text of the Land Development Code. The amendment will identify zoning districts, review standards, and parking standards for the siting of sexually oriented businesses (SB's) within the City of Gunnison.

Community Development Director Hannon reviewed the Planning & Zoning Commission's findings of fact listed here in condensed form:

- A. The amendment is consistent with purposes of the Land Development Code.
- B. There is no conflict with other provisions in the Land Development Code.
- C. It is consistent with the Master Plan.
- D. It shall preserve public health, safety and welfare.

Community Development Director Hannon then entered several documents into the record:

- A. Minutes from the first and second public hearings (5/28/03 and 7/9/03).
- B. Staff report and attachments from the final public hearing on August 13, 2003. This report includes the very first staff report for the public hearing on 5/28/03 which contains a listing of reports cited as documentation of secondary impacts.
- C. Maps from field work done in December, 2002.
- D. Definition of massage parlors from the Colorado Revised Statutes.
- E. Letters of support for the regulations.
- F. Letter from citizen Deborah Mason received today by the City Clerk's office

Sections of the Land Development Code that are recommended for change are Section 15-4-1, Definitions; Chapter 15, Article 7, Table 7-3, Schedule of Uses; and new subsection (D) added to Section 15-7-4.

The Mayor asked the City Attorney to give a brief explanation of how the City is not authorized to modify First Amendment rights. City Attorney Landwehr stated that as the City stands today, there is no regulation as to the location of sexually oriented businesses. Theoretically they could be located in any Business or Commercial District. In addition, we are constrained by the Constitution which prohibits us from eliminating or absolutely prohibiting these kinds of businesses which may express some kind of First Amendment ideas. It is the same reasoning that we can't do this to churches, so we can't do it to these types of businesses. We can regulate their location based upon their secondary impacts and that's what we tried to do here. The Mayor thanked the City Attorney.

The Mayor asked for public input or testimony.

Citizen Ed Slaughenhaupt, Pastor from First Baptist Church, approached Council to give testimony. He first thanked Council for the good job they are doing. He would like to take issue with the statement that Cities do not have the right to prohibit sexually oriented businesses. He cited a case ruling from the California Supreme Court decreeing that communities that felt that businesses that were harmful did have the right to restrict those businesses. He wants clarification on the locations being proposed. He gave statistics from studies regarding this issue. The overwhelming evidence is that these types of businesses are extremely harmful to communities. It is his understanding that the Supreme Court ruled that businesses that were found harmful to communities gave the community the right to restrict. He feels that Gunnison is in it's right to have 100% restrictions to these types of businesses. He feels that the reasoning of having to let these types of businesses in our community due to their first Amendment rights can be challenged. He appeals to Council to totally, 100%, restrict these types of businesses from coming into our community. He wants Council to define what "minimized" impact to the City will be.

City Attorney Landwehr stated that this Ordinance is "content neutral", in otherwords, we do not attempt to define what is obscene, which the Miller case that you have cited did. We are not saying that the material that this particular business may have is obscene, but if it has a particular orientation then we are going to limit the locations into which it may be placed, and that's the only way we're going to attempt to minimize the adverse impacts of these businesses. We don't disagree with you that they do have adverse impacts. We cited in the materials that we have submitted to Council, numerous studies that show that when these businesses tend to proliferate in a certain area,

it affects

Regular Session Minutes
September 23, 2003
Page Three

various aspects of the community, be it real estate values, crime levels or sexually transmitted diseases. We are not attempting to define obscene materials, by this ordinance. Even if it's not obscene, by the definition that you cited in the Miller case, we're still going to regulate where they can be placed. The ordinance is content neutral and if it fits the definition of a sexually oriented business, even though not obscene, we are going to limit where it is located.

Mr. Slaughenhaupt asked for the ordinance definition of a sexually oriented business. Community Development Director Hannon gave Mr. Slaughenhaupt a copy. He asked if the Miller case applies only with what is obscene. The City Attorney responded yes. Mr. Slaughenhaupt stated that he thinks that the City should define what is obscene before Council takes any action. He still believes that restriction can be 100%. He thinks restricting sexually oriented business to the Industrial Zone opens the door for such businesses to come into the community. Councilmember Duba thanked Mr. Slaughenhaupt and he, in turn, thanked Council for their time.

Citizen Joy Hart approached Council to give input. Ms. Hart stated that she knows that the Community Development Department has been working long and hard on this issue, as she used to sit on the Planning Commission. They have been at it for three years. She thinks they are headed in the right direction. She hopes Council will agree with the Planning & Zoning Commission. The Mayor thanked her for her testimony.

The Mayor called for further public input. Citizen Deborah Mason approached Council. She stated that she is from Houston, TX, and in Houston they have subdivided cities. Time over and over again there has been a push for sexually oriented businesses to come into wealthy communities. She believes there is a way to push out these types of businesses. She doesn't know the law but she will do some research. It's great that the City is trying to push them into the Industrial Zone, however there are still children in this zone. The communities in Houston pushed these businesses into the ghetto area of Houston and kept it there. She believes that some attorney somewhere has found a glitch to make this possible. She will research and see what she can find out. The Mayor thanked Ms. Mason.

The Mayor called for further public input. Hearing none, Mayor Ferguson closed the Public Hearing at 7:31 P.M.

Consideration of Minutes:

Regular Session Minutes of September 9, 2003

Councilmember Simillion moved and Councilmember Stone seconded the motion to approve the Regular Session Minutes of September 9, 2003, as submitted.

Roll call vote, yes: Simillion, Stone, Ferguson, Smits, So carried.

Roll call vote, no: None.

Councilmember Duba abstained as he was out of town during that meeting.

Special Session Minutes of September 15, 2003

Councilmember Stone moved and Councilmember Simillion seconded the motion to approve the Special Session Minutes of September 15, 2003, as submitted.

Roll call vote, yes: Stone, Ferguson, Smits, Duba, Simillion, So carried.

Roll call vote, no: None.

Pre-Scheduled Citizens:

Chamber of Commerce Director Tammy Scott - Results of Shopping "Leakage" Survey.

Ms. Scott came forward and addressed Council. She wants to talk about the Chambers latest shopping leakage survey, why they decided to do it, and talk about the results. This year, Home
Regular Session Minutes
September 23, 2003
Page Four

Depot opened in Montrose, and the Chamber wanted to determine the amount of leakage the City of Gunnison is experiencing because of this development. A total of 672 surveys were completed between March 1st and April 15th. Ms. Scott reviewed the statistics of the survey. Two of the main reasons for leakage was apparel and price, with apparel showing 72% of out of town shopping and 65% listed price as the reason for out of town shopping. There was more leakage in the medical and dental services than there was in a 1995 survey. Internet shopping is a newer medium that people are also using. Overall, 51% of the people polled purchased goods and services in other communities. Ms. Scott finished reviewing the statistics.

Ms. Scott stated that they will go forward with continuing education on what shopping local does and how it helps the community, goods and services that are available in our community, and increase the usage of the Chamber's Gunnison Greenback Program. The program guarantees local shopping.

Council thanked Ms. Scott for the informative report. Councilmember Simillion stated that leakage has been going on more than ten years, it has been happening the last thirty. It's a real battle. Councilmember Stone stated that other communities are benefitting from some of our leakage while Gunnison doesn't have anybody coming here from other communities. It was an excellent survey. Ms. Scott stated that she feels that the percentage of people shopping out of town is more than the 33% that was from the 1995 survey.

Gunnison Housing Authority Director Shary Templeton - GHA Update and Request for Waiver of Utility Connection Fees. Director Templeton and Construction Supervisor Norman Sullie came forward to address Council. Director Templeton reviewed the update that was in Councils packets which covered Mutual Self Help Build; Section 8 Voucher Program; Mt. View Apartments; Verzuh/Paradise Park; Mt. Crested Butte; The Willows; Home buyers Workshop; WCHDO; Habitat for Humanity; Federal Home Loan Bank of Topeka; and the Rural Housing Loan Program.

Director Templeton stated that the Gunnison Housing Authority would like to request waived or reduced tap fees presented by Norman Sullie. Mr. Sullie stated that the GHA is a anti-leakage program that brings money into the local economy and uses local suppliers and contractors. It's an economical development program. Mr. Sullie said he was aware that the City has budget constraints and asked for Council to consider future possibilities. He stated that in Council's packet there was information that outlines the reasons they think Council should consider new avenues to assist programs like theirs. This includes investigating waivers or reductions for affordable housing.

Councilmember Duba asked how these homes remain affordable through successive ownerships. Director Templeton replied that the homes are built by the homeowners and then roll into a mortgage. In subsequent sales they can only realize a very small amount of the equity. We slow down the equity so a windfall from a sale is not possible. GHA wants to maintain an affordable housing stock over a long period of time. When they sell, the homes are deed restricted so they can realize 3% per annum plus CPI. They basically slow down the equity so they remain affordable over a long period of time.

Councilmember Smits stated that the C.O. won't be issued until 2004 and if Council chose to budget in 2004 it could affect the third build. Director Templeton agreed because possession won't occur until May or June of 2004. Councilmember Stone suggested that if this was going to be a 2004 budget request that we get a work session scheduled along with the other grant contribution requests/contract for service requests between now and the final budget adoption.

Councilmember Duba stated that we don't consider waiving these fees, we would rather fund it in capital projects as a way to offset those. The way capital infrastructure is funded it's a bad idea to give those away. Mayor Ferguson stated that fourth quarter revenues haven't been as high as projected, we may have to cut already budgeted items. For next year, there is approximately \$160,000.00 budgeted for about \$290,000.00 in requests. Councilmember Smits would like to see the dollar amount come down, comparable to the amount that Habitat for Humanity had requested.

He asked that GHA consider coming up with ideas for the City to provide in-kind services. He

Regular Session Minutes
September 23, 2003
Page Five

would like for GHA to provide a revised document for the Work Session. City Manager Collins stated that the October 7th Work Session is the first session for the contribution requests/contract for services. Director Templeton thanked Council.

Gunnison County Beautification/Scenic Corridors Committee - Sue Oates and Harley Tripp. Ms Oates stated that this is an informational update on what our committee is doing. The County created this committee in May of this year and charged them to formulate and carry out a beautification program for the County. The County Commissioners have identified the West Elk Scenic Byway loop and US Hwy 50 from Gunnison to the Saguache County line as the first corridors to be addressed by this committee. They sponsored a three month clean-up campaign which has been very successful.

Tourism, Western State College and second home owners are primary resources for our County. First and last impressions are important. Our committee believes that we need to clean up and improve the areas adjacent to the airport. We formed a subcommittee chaired by Harley Tripp and they have started to study this issue. They hope to return sometime in the near future and present their report and recommendations. Mr Tripp stated that last year Hwy 50 through Gunnison has been designated a National Trial. Ms. Oates stated that being designated a National Trial or Scenic Corridors opens the door to a vast increase in numbers of people who might consider visiting our area. Tourism is important and we don't want to ignore it. Ms. Oates asked if Council had any questions. Council did not and the Mayor thanked the committee.

Unfinished Business: 2004 Budget Update. Finance Director Hanson stated that she will briefly go over the updates. The General Fund Expense has an adjustment of \$15,000.00 added to the revenue from a ADAD grant received by Partners and then a \$15,000.00 expense under capital. The slurry seal \$80,000.00 project will be postponed, placing it as #1 on the supplement list for 2004.

Under Capital Improvements, the West Tomichi Parcel will gain \$5,000.00; the automatic fire door opener for police records can be purchased under CIRSA's loss control fund and the fenced area for the found bike storage will be built by the Electric Department in trade for a cold storage unit. Two items that were not included in the list that we talked about last week was the Re-codification of City Records for which we need to add \$10,000.00, and the Concrete Drying Pad split between the Fleet and the Water Departments for \$3,000.00. Some possibilities that was talked about today was the concrete under the rink to be added to the supplemental list, the Fleet Department has three capital projects: the washer for the equipment, the concrete drying pad and the oil heater that will be prioritized and may have one of the projects taken off. The Electric Fund will have the \$1,600.00 expenditure for the cold storage area and the Water Fund expenses will have Professional Services reduced by \$2,000.00 and increase the Other Purchased Services by that same amount. The Cranor Hill Expenses will have Utilities at \$1,000.00 for 2004 and the 2003 year end projection will reflect \$500.00. Council thanked the Finance Director.

New Business:

Letter of Support for Tenderfoot and Mountaineer Archeological Sites for Colorado State Historical Fund Grant Application. This item was discussed at the Work Session prior to this Regular Session.

Councilmember Stone moved that the Council approve the letter of support for Tenderfoot and Mountaineer Archeological Sites for the Colorado State Historical Fund Grant application and instruct the Mayor to sign said letter. Councilmember Simillion seconded the motion.

Roll call vote, yes: Ferguson, Smits, Duba, Simillion, Stone. So carried.
Roll call vote, no: None.

Local Law Enforcement Block Grant (LLEBG) Application in the Amount of \$8,900.
This item was discussed at the Work Session prior to this Regular Session.

Councilmember Smits moved and Councilmember Stone seconded the motion to authorize the Mayor to sign the Local Law Enforcement Block Grant application in the amount of \$8,900 and giving the Council's approval of such application.

Roll call vote, yes: Smits, Duba, Simillion, Stone, Ferguson. So carried.
Roll call vote, no: None.

Ordinance and Resolutions:

Ordinance No. 12, Series 2003; Re: RLUIPA; 1st Reading

Councilmember Stone introduced Ordinance No. 12, Series 2003, and it was read by title only by the City Attorney.

Councilmember Stone moved and Councilmember Simillion seconded the motion that Ordinance No. 12, Series 2003, **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON AMENDING TABLE 7-3, SCHEDULE OF USES - COMMERCIAL/INDUSTRIAL ZONE DISTRICTS, OF CHAPTER 15, LAND DEVELOPMENT CODE, ARTICLE 7, USE AND DIMENSIONAL STANDARDS, OF THE CITY CODE OF THE CITY OF GUNNISON**, be introduced, read, passed, and ordered published on first reading this 23rd day of September, 2003.

Roll call vote, yes: Duba, Simillion, Stone, Ferguson, Smits. So carried.
Roll call vote, no: None.

Ordinance No. 13, Series 2003; Re: Siting of Sexually Oriented Businesses, 1st Reading

Councilmember Smits introduced Ordinance No. 13, Series 2003, and it was read by title only by the City Attorney.

Councilmember Smits moved and Councilmember Simillion seconded the motion that Ordinance No. 13, Series 2003, **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON AMENDING CHAPTER 15 OF THE CITY CODE OF THE CITY OF GUNNISON ENTITLED "LAND DEVELOPMENT CODE", ESTABLISHING DEFINITIONS AND LOCATIONAL STANDARDS FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF GUNNISON, COLORADO**, be introduced, read, passed, and ordered published on first reading this 23rd day of September, 2003.

Councilmember Smits stated that it's a start, and at any time a citizen can bring to the Planning Commission any amendments they would like to see to this. It is a living document that can be changed at any time. When the Planning Commission worked on this, unfortunately they didn't have the public input. This is a good thing to at least start with.

The Mayor added that it was a very good beginning, it may not be the end, but it is a step forward.

Councilmember Stone concurred and would like to thank the Planning Commission and Staff for three years of work. Council appreciates your efforts.

Roll call vote, yes: Simillion, Stone, Ferguson, Smits, Duba. So carried.
Roll call vote, no: None.

Resolution No. 14, Series 2003; Re: Accepting the Bid for Purchase and Sale of the City-owned Property in Block 41, West Gunnison Amended, and Authorizing the Mayor and the City Clerk to Execute the Contract for Purchase and Sale of Said Property

Councilmember Stone introduced Resolution No. 14, Series 2003, and it was read by title only by the City Attorney.

Councilmember Stone moved and Councilmember Simillion seconded the motion that Resolution No. 14, Series 2003, **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ACCEPTING THE BID OF COLE CONSTRUCTION INC. FOR THE PURCHASE AND SALE OF THE CITY-OWNED PROPERTY IN BLOCK 41, WEST GUNNISON, FOR THE PURCHASE PRICE OF \$253,000.00 AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE THE CONTRACT FOR PURCHASE AND SALE THEREOF AND TO EXECUTE THE DEED THEREFOR**, be introduced, read, passed, and adopted, this 23rd day of September, 2003.

Councilmember Smits thanked the City Attorney and Staff for all their work on the bidding process.

Roll call vote, yes: Stone, Ferguson, Smits, Duba, Simillion. So carried.

Roll call vote, no: None.

City Attorney: Nothing to report.

City Manager: Collins informed Council that next week you will receive your departmental McPorts. Mayor's/Manager's meeting is next Thursday, October 2nd, the place is to be announced. Collins informed Council that he would be out of town on vacation next week and Acting City Managers will be Dan Ampietro for September's and Ken Coleman for October.

Acting City Manager: Parks & Recreation Director Ampietro stated that Council received his Departmental Report in their packets and asked for any questions. He also has an update on the Community Center. He received a faxed copy of the draft plans and site plans from Chris Carvel today. The wording on the faxed copies did not turn out well. The tentative dates for presentation are October 7th, 8th, or 9th. They have requested to combine the Multipurpose room against the gymnasium so there is an ability to have a movable wall to utilize half of the gym for the gymnastics program. These plans still have to be finalized and it will still be tweaked a bit. It's a little over the square footage mark. Council will receive copies whenever there is an update. If Council has comments on the plans please get back with him and he'll notify Chris Carvel.

Councilmember Duba asked for clarification on the plan. Ampietro replied that it was a drop-off area for the Senior's entryway. Chris Carvel wants to create a park-like setting on the western half of that property to buffer it from the Industrial properties. The pool has remained the same and the locker rooms have a slightly different configuration.

Councilmember Duba asked where the snack bar type amenities will be. Ampietro replied that vending will be provided in the front lobby area. The idea is to make a lot of this glass so that the person in the control room can see into the pool, gymnasium and possibly into the multipurpose room.

Councilmember Duba asked for clarification on the process, will we have to have a RFP for the final blueprints. Ampietro stated yes. Collins stated that what we've contracted for up to this point is the conceptual drawings. It is open for modifications and refinement before the final blueprint is done. The building will angle out slightly by the staircase. Chris Carvel has an aerial drawing of this design, but it didn't come across clearly on the fax. Ampietro will forward a hard copy to Council when he gets it.

Councilmember Simillion expressed concern that there wasn't enough parking. City Manager Collins went over where the parking will be. There is also overflow parking in the Meadows Park parking lot. Collins also stated that the pool has solar exposure and that the deck space will have southern exposure. This space will also allow for expansion of an outdoor pool. Ampietro also stated there is expansion room east of the multipurpose building.

Ampietro asked for additional questions. Council had none and thanked Parks and Recreation Director Ampietro for the good report.

City Clerk : Deputy City Clerk Meehan informed Council that they received an invitation to attend Senator Campbell's community outreach that will be held Friday, October 10th at 11:00 A.M. in Council Chambers. The Senator will not be present. Council also received an invitation from the Gunnison Housing Authority to attend the groundbreaking ceremonies of the third build of the Mutual Self-help Build Homes at 2:00 P.M. on Wednesday, October 1st at Rock Creek Commons. She also asked Council if they would be available for field tour of street improvement projects from 5:30 P.M. - 6:30 P.M. on Tuesday October 21st prior to the work session. A dinner will be provided upon their return to City Hall. Councilmembers Smits and Duba expressed interest in taking the tour and they may also be at the Rock Creek Commons groundbreaking ceremony.

Non-Scheduled Citizens: None.

General Discussion/Items for Work Sessions:

Councilmember Stone: He attended a meeting this morning with the Tourism Association that had a presentation by the Gunnison Valley Economic Development Corporation (GVEDC). The GVEDC has hired a Director, Lee Dusa. The only money available to the GVEDC from the Tourism Association would be part of a grant process that could be used towards materials for printing postage, mailing list, that type of thing. He suggested that City Manager Collins draft a letter for the Mayor's signature to the Chairman of the County Commissioners asking for some kind of expectation of how those funds are going to be used. He would like that information prior to the next Budget Work Session on Grants review. The Mayor stated that he would be happy to sign it.

Councilmember Simillion: Nothing to report.

Councilmember Duba: Nothing to Report.

Councilmember Smits: He wanted to thank the Water Department and the Police Department for their efforts on the alley work that continued through the night in the rain. Also, the two police officers that helped with the challenge program. There were two letters in the newspaper recognizing their efforts. He thinks it's a positive outreach to the community.

Mayor Ferguson: Nothing to Report.

Adjournment: The meeting was adjourned at 8:52 P.M.

Mayor

City Clerk